

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

TRUSTEES OF IBEW LOCAL NO. 490 PENSION FUND,)
TRUSTEES OF IBEW LOCAL NO. 490 ANNUITY FUND,)
TRUSTEES OF IBEW LOCAL NO. 490 APPRENTICESHIP &)
TRAINING FUND, TRUSTEES OF IBEW LOCAL NO. 490)
LABOR MANAGEMENT COOPERATION FUND, and)
IBEW LOCAL UNION NO. 490,)

Plaintiffs,)

v.)

DENISCO ELECTRIC LLC,)

Defendant.)

C.A. No. _____

COMPLAINT

1. This is an action under the Employee Retirement Income Security Act of 1974 (hereinafter “ERISA”), particularly 29 U.S.C. §§ 1132(a)(3)(B)(ii), (d)(1) & (f) § 1145, and the Labor Management Relations Act of 1947 (hereinafter “LMRA”), 29 U.S.C. § 185, *et seq.*, to compel Denisco Electric LLC (the “Employer” or “Defendant”) to allow the Trustees of the IBEW Local No. 490 Pension Fund, the Trustees of IBEW Local 490 Annuity Fund, the Trustees of IBEW Local No. 490 Apprenticeship & Training Fund, and the Trustees of IBEW Local No. 490 Labor Management Cooperation Fund (collectively the “Funds” or “Trustees”) to conduct an audit of its business and payroll records.

2. Jurisdiction is conferred on the Court by 29 U.S.C. §§ 1132(e)(1) & (f) and 29 U.S.C. §§ 185(a), (b) & (c), none of which is dependent on the amount in controversy or diversity of citizenship.

3. Venue lies in this district pursuant to 29 U.S.C. §§ 1132(e)(2) and U.S.C. §

185(c).

4. The IBEW Local No. 490 Pension Fund, the IBEW Local No. 490 Annuity Fund, the Local No. 490 Apprenticeship & Training Fund and the Local No. 490 Labor Management Cooperation Fund, are trusts established in accordance with 29 U.S.C. §186(c), are employee pension benefit plans, employee welfare benefit plans, and a labor management fund, as defined by 29 U.S.C. §1002(1) & (2) and 29 U.S.C. §186(c)(9), and are governed by the plaintiff Trustees each of whom is a fiduciary to the plans as defined by 29 U.S.C. §1002(21).

5. Plaintiff IBEW Local Union No. 490 (the “Union”) is a labor organization as defined by 29 U.S.C. § 152(5) with its principal place of business in Concord, New Hampshire.

6. Defendant Denisco Electric LLC is a limited liability company incorporated and existing under the laws of the State of New Hampshire and having a place of business in Manchester, New Hampshire.

7. Defendant is engaged in an industry affecting commerce as defined in ERISA, 29 U.S.C. §§ 1002(5), (11) & (12) and as described in LMRA, 29 U.S.C. §§ 152(2), (6) & (7).

8. Defendant is and at all material times has been a party to a collective bargaining agreement with the Union.

9. Defendant’s collective bargaining agreement with the Union and the trust agreements pursuant to which the Funds are established and maintained, which are incorporated by reference in the collective bargaining agreement, require Defendant to allow the Funds and their representatives to conduct random audits of Defendant’s books and records.

10. The Funds repeatedly have attempted to conduct an audit of Defendant’s books and records, but Defendant has refused to allow the Funds to conduct such an audit by refusing

to provide the Plaintiffs' auditor access to the necessary records.

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

A. That Defendant be ordered to allow the Funds to conduct an audit of Defendant's books and records.

B. That Defendant be ordered to pay to Plaintiffs their costs and disbursements, including reasonable attorney's fees, incurred in this action, pursuant to 29 U.S.C. §1132(g)(1).

C. That the Plaintiffs receive such other legal or equitable relief as this Court deems just and proper.

Respectfully submitted,
TRUSTEES OF IBEW LOCAL NO. 490
PENSION FUND,
TRUSTEES OF IBEW LOCAL NO. 490
ANNUITY FUND,
TRUSTEES OF IBEW LOCAL NO. 490
APPRENTICESHIP &
TRAINING FUND, TRUSTEES OF IBEW
LOCAL NO. 490
LABOR MANAGEMENT COOPERATION
FUND, and
IBEW LOCAL UNION NO. 490

By their attorneys,
HAGE HODES, P.A.

Date: April 12, 2019

/s/ Jamie N. Hage
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Date: April 12, 2019

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